In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-219

JOHN CLARENCE COOK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a trial by jury in the United States District Court for the Southern District of Florida, petitioner was convicted of conspiring to burglarize post offices and of receiving, concealing and possessing stolen postage stamps on three occasions, in violation of 18 U.S.C. 371 and 641. He was sentenced to imprisonment for twelve years and to fines aggregating $30,000. The court of appeals affirmed (Pet. App. 13-23).

Petitioner's arguments in support of his petition for certiorari were raised before the court of appeals and that court fully considered and properly rejected

476-013—72

them.[1] In opposing further review, we rely mainly on the pertinent portion of the opinion below (Pet. App. 20–23).

In response to petitioner's contention that the record is inadequate to support the conclusion that he had "waived" his right to be represented by counsel unencumbered by a perhaps conflicting personal interest, we point out that petitioner was undeniably aware of his lawyer's awkward involvement in some of the events in issue, and he nevertheless retained the lawyer to represent him at trial. Even if that choice proved embarrassing to both petitioner and his counsel, it was a risk that must necessarily have been contemplated. And disclosure of this fact came about only after the trial judge found that in defending petitioner's interests at the trial his counsel had used the strictures of the stipulation to create a misleading impression about the evidence in the minds of the jurors.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1972.

[1] Petitioner has apparently abandoned other arguments which he made in the court of appeals.

U.S. GOVERNMENT PRINTING OFFICE 1972